

120-Day Demands for Civil Action

Bill Proposal:

Amend Government Code sections 91004 and 91007 to incorporate the following provisions relating to mass filings of “120-day demands:”

- a. Limit the number of 120-day demands that may be filed by any one person, or group of persons acting in concert.
- b. Allow the court to increase the limit upon a showing of good cause.
- c. Require notification of respondents when a demand is made.
- d. Provide that the commencing of an administrative action shall bar the filing of a civil action by the private attorney general, except upon subsequent dismissal of the complaint by the Commission.
- e. Direct the courts to consider Commission policy as they craft judicial remedies.

Problem:

Under current law, an individual is able to file mass quantities of demands for civil action at one time, placing enormous burden on the Commission to investigate hundreds of respondents within an impossibly short time period. If the Commission does not file suit within 120 days, then the individual is free to file suit against the respondents. As a result, when mass quantities of demands are filed together, respondents are not given their administrative due process simply because of the shear load of demands that were filed with the Commission at one time.

In June, 2005, the Commission learned of a private civil action initiated under section 91007, in which a plaintiff alleged that hundreds of defendants had violated the Act’s major donor reporting rules. A “major donor” is defined at section 82013(c) as any person who contributes a total of \$10,000 or more to or at the behest of candidates or committees during a calendar year. Even if not otherwise qualified as a “committee” under the Act, a major donor must file a report disclosing these contributions, as outlined at sections 84200 *et seq.* Failure to timely file such a report is a violation of the Act.

When made aware through investigation, audit, or complaint that a major donor has failed to timely file a required report, the Commission may prosecute the violation administratively, or it may proceed “civilly” by filing a lawsuit in state court after following the procedures described at sections 91000 *et seq.* To encourage compliance with reporting requirements, section 91004 also allows prosecution of these violations by “any person residing within the jurisdiction.” This “private attorney general” option encourages prosecution of violations when public agencies charged with that responsibility are, for any reason, unable or unwilling to act.

Section 91007 provides the Commission with a right of first refusal on any such civil action by requiring that, before filing a civil action under section 91004, the prospective private attorney general must first file a written request that the Commission itself commence a civil lawsuit, along with a statement of reasons for believing that grounds for prosecution exist. If the Commission files suit within 120 days, private civil actions on the same claim are barred while the Commission’s action is pending.

If the Commission chooses not to initiate a civil action after notice under section 91007, private civil actions are available for violations of section 91004, as alleged in the Ryan action. Recognizing the possibility that several lawsuits based on the same violation might be initiated by private litigants, section 91008 provides that no more than one judgment on the merits may be obtained for any given violation. The earliest-filed private action generally has priority over subsequent lawsuits, and later-filed actions will be dismissed once judgment has been entered (or a settlement approved by the court) on the prior action.

Consistent with the principle evidently underlying section 91008 – that there should be only one remedy for any given violation – section 91008.5 bars the filing of any civil action under section 91004 after the Commission has decided the claim administratively. The statute is however silent as to the preclusive effect of an administrative adjudication entered *after* a private civil action has been filed in full compliance with the statutory process described above.

In summary, the statutory scheme provides some limitations on the filing of 120 day demands for civil action; however, it does nothing to protect against the simultaneous filing of hundreds of these demands. The presentation of a very large number of “120-day demands” strains Commission resources, and makes it impossible to act on each demand within the time period provided. This has led to civil actions being filed against persons who, upon reasonable investigation, should not have been prosecuted. There is a sense in some quarters that mass prosecutions under section 91004 may be partisan in their aims, or involve unwholesome “profiteering” rather than genuine concern for the public interest.¹ In some cases, these private civil actions may be perceived as a form of “extortion” carried out under color of law in much the same fashion as the “unfair competition” lawsuits against small businesses a few years ago that resulted in sanctions against the law firms that filed them. Widespread private attorney general prosecution of Political Reform Act violations may undermine Commission policies for the management of such cases because it forces the Commission to adjust its priorities, and it may also lead to inconsistent adjudication of similar violations because courts are not bound to follow Commission policies for handling these violations.

Proposed Solution:

This bill would provide appropriate requirements and specifications for private attorney general actions to address the above issues while still preserving the ability of one to file such an action under the Act.

Fiscal Impact:

Potential cost savings by eliminating the filing of mass quantities of demands.

Bill Language:**§ 91007. Procedure for Civil Actions.**

(a) Any person, before filing a civil action pursuant to Sections 91004 and 91005, must first file with the civil prosecutor a written request for the civil prosecutor to commence the action. The request shall include a statement of the grounds for believing a cause of action exists, and must include an affirmation that a copy of the written request has been provided to the person or

¹ A private attorney general is entitled to fifty percent of any amount recovered which, in the case of a reporting violation, can range up to the full amount of the amount not reported. (Sections 91009, 91004.)

persons against whom a cause of action is said to exist. No person, or group of persons acting in concert, shall file more than 10 such written requests within any 12 month period. The civil prosecutor shall respond to the person in writing, indicating whether he or she intends to file a civil action.

(1) If the civil prosecutor responds in the affirmative and files suit or issues an order pursuant to Section 83116 commencing an administrative action within 120 days from receipt of the written request to commence the action, no other action may be brought unless the action brought by the civil prosecutor is dismissed without prejudice as provided for in Section 91008.

(2) If the civil prosecutor responds in the negative within 120 days from receipt of the written request to commence the action, the person requesting the action may proceed to file a civil action upon receipt of the response from the civil prosecutor, provided that the person against whom a cause of action is asserted has actually and timely received the notice required in subdivision (a), and further provided that the person filing the action, or persons acting in concert with that person, has not filed 10 or more written requests under this section within the previous 12 months. If, pursuant to this subdivision, the civil prosecutor does not respond within 120 days, the civil prosecutor shall be deemed to have provided a negative written response to the person requesting the action on the 120th day and the person shall be deemed to have received that response.

(3) The time period within which a civil action shall be commenced, as set forth in Section 91011, shall be tolled from the date of receipt by the civil prosecutor of the written request to either the date that the civil action is dismissed without prejudice, or the date of receipt by the person of the negative response from the civil prosecutor, but only for a civil action brought by the person who requested the civil prosecutor to commence the action.

(b) Any person filing a complaint, cross-complaint or other initial pleading in a civil action pursuant to Sections 91003, 91004, 91005, or 91005.5 shall, within 10 days of filing the complaint, cross-complaint, or initial pleading, serve on the Commission a copy of the complaint, cross-complaint, or initial pleading or a notice containing all of the following:

(1) The full title and number of the case.

(2) The court in which the case is pending.

(3) The name and address of the attorney for the person filing the complaint, cross-complaint, or other initial pleading.

(4) A statement that the case raises issues under the Political Reform Act.

(c) No complaint, cross-complaint, or other initial pleading shall be dismissed for failure to comply with subdivision (b).

§ 91004. Violations of Reporting Requirements; Civil Liability.

Any person who intentionally or negligently violates any of the reporting requirements of this title shall be liable in a civil action brought by the civil prosecutor or by a person residing within the jurisdiction for an amount not more than the amount or value not properly reported. In exercising its discretion to set the amount of a judgment under this section, the court shall take into consideration any rules and regulations of the Commission applicable to similar violations.